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and on behalf of other individuals similarly situated

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

OMAR J. ALVAREZ, individually and on behalf
of other individuals similarly situated,

Plaintiff,

v.

ABM AVIATION, INC., a Georgia corporation;
and DOES 1 through 100, inclusive

Defendants.

CASE NO.

CLASS ACTION COMPLAINT FOR:

- 1. Failure to Pay All Wages;**
- 2. Short Meal Breaks in Violation of
California Labor Code §§ 200, 226.7,
512;**
- 3. Short Rest Breaks in Violation of
California Labor Code §§ 200, 226.7,
512;**
- 4. Failure to Furnish an Accurate,
Itemized Wage Statement upon
Payment of Wages in Violation of
California Labor Code § 226;**
- 5. Failure to Pay All Wages Owed at
Termination in Violation of California
Labor Code § 203;**
- 6. Violations of California Business &
Professions Code §§ 17200, et seq.**

DEMAND FOR JURY TRIAL

1 Plaintiff OMAR J. ALVAREZ (hereinafter referred to as “Plaintiff”), hereby submits his Class
2 Action Complaint against Defendant ABM AVIATION, INC., a Georgia corporation; and Does 1-
3 100 (hereinafter referred to as “Defendants”) on behalf of himself and the class of all other similarly
4 situated current and former employees of Defendant as follows:

5 **INTRODUCTORY FACTUAL ALLEGATIONS**

6 1. This class action is within the Court's jurisdiction under California *Labor Code* and
7 California *Business and Professions Code* § 17200, et seq., (Unfair Practices Act).

8 2. This complaint challenges systemic illegal employment practices resulting in
9 violations of the California *Labor Code*, and California *Business and Professions Code* against
10 employees of Defendants.

11 3. Plaintiff seeks relief on behalf of himself and the members of the Plaintiff Class as a
12 result of employment policies, practices and procedures more specifically described below, which
13 violate the California *Labor Code*, and the orders and standards promulgated by the California
14 Department of Industrial Relations, Industrial Welfare Commission, and Division of Labor Standards,
15 and which have resulted in the failure of Defendants to pay Plaintiff and members of the Plaintiff
16 Class all wages due to them. Said employment policies, practices and procedures are generally
17 described as follows:

- 18 a. Failure to pay Plaintiff and members of the Plaintiff Class for all wages;
19 b. Failure to provide Plaintiff and members of the Plaintiff Class with meal breaks
20 mandated by the California *Labor Code*;
21 c. Failure to provide Plaintiff and members of the Plaintiff Class with rest periods
22 mandated by the California *Labor Code*;
23 d. Failure to provide accurate itemized wage statements; and
24 e. Failure to pay all wages upon termination.

25 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
26 engaged in, among other things a system of willful violations of the California *Labor Code*, California
27 *Business and Professions Code*, and applicable IWC wage orders by creating and maintaining policies,
28 practices and customs that knowingly deny employees the above stated rights and benefits.

5. The policies, practices and customs of Defendants described above and below have resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that routinely adhere to the structures of the California *Labor Code*, and California *Business and Professions Code*.

6. This matter is brought as a class action pursuant to California *Code of Civil Procedure* §382, on behalf of Plaintiff and the plaintiff class, which is defined more specifically below, but which is comprised, generally, of all former and current employees of Defendants ABM AVIATION, INC, a Georgia Corporation; who hold or held the job positions which Defendants classified as “non-exempt” at any of Defendants’ facilities in California and throughout the United States.

7. This Complaint alleges systematic violations of the California *Labor Code* (hereinafter, “*Labor Code*,”) and the California *Business & Professions Code* and is brought by Plaintiff on his own behalf and on behalf of the members of the Plaintiff Class.

8. The California Plaintiff “Class Period” is defined as the period from four years prior to the filing of this action through and including the date judgment is rendered in this matter. Plaintiff herein reserves the right to amend this Complaint to reflect a different Class Period as discovery in this matter proceeds.

9. The actions of Defendants are in violation of the California *Labor Code* as well as the wage orders of the Industrial Wage Commission of the State of California and, as a result, are unlawful and unfair acts, thus constituting a violation of California *Business & Professions Code* § 17200, et seq. (Unfair Practices Act).

10. The policies, practices and customs of Defendants described above and herein have resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that routinely adhere to the requirements of the California *Labor Code* and of the *Business & Professions Code*.

JURISDICTION AND VENUE

11. On information and belief, Defendants are either citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional

1 notions of fair play and substantial justice.

2 12. Venue is proper in Los Angeles County because the acts which give rise to this
3 litigation occurred in this county and Defendants do business in Los Angeles County.

4 **THE PARTIES**

5 13. Plaintiff OMAR J. ALVAREZ (“Plaintiff”) is a resident of Los Angeles County, in the
6 State of California. Plaintiff was employed by Defendants, ABM AVIATION, INC., a Georgia
7 Corporation, , in Los Angeles, California from approximately 2016 through May 26, 2020. Plaintiff
8 was employed as a janitor and made approximately \$16 per hour.

9 14. Defendant ABM AVIATION INC., is a Georgia Corporation that conducts business in
10 California.

11 15. Plaintiff is informed and believes, and based thereon alleges, that at all times herein
12 mentioned Defendants and DOES 1 through 100, are and were corporations, business entities,
13 individuals, and partnerships, licensed to do business and actually doing business in the State of
14 California.

15 16. Plaintiff does not know the true names or capacities, whether individual, partner or
16 corporate, of the Defendants sued herein as DOES 1 through 100, inclusive, and for that reason, said
17 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint
18 when the true names and capacities are known. Plaintiff is informed and believes, and based thereon
19 alleges, that each of said fictitious Defendants were responsible in some way for the matters alleged
20 herein and proximately caused Plaintiff and members of the general public and class to be subject to
21 the illegal employment practices, wrongs and injuries complained of herein.

22 17. At all times herein mentioned, Defendants participated in the doing of the acts
23 hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and
24 each of them, were the agents, servants and employees of each of the other Defendants, as well as the
25 agents of all Defendants, and at all times herein mentioned, were acting within the course and scope
26 of said agency and employment.

27 18. Plaintiff is informed and believes, and based thereon alleges, that at all times material
28 hereto, each of the Defendants named herein were the agent, employee, alter ego and/or joint venturer

of, or working in concert with each of the other co-Defendants and were acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

19. At all times herein mentioned, Defendants, and each of them, were members of, and engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

20. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

21. The members of the Plaintiff Class, including the representative Plaintiff named herein, have been employed during the Class Period in California. The practices and policies which are complained of by way of this Complaint are enforced throughout the State of California and the United States.

FACTUAL ALLEGATIONS

22. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

23. Defendants have engaged in, and continue to engage in, unfair business practices in California by practicing, employing and utilizing the employment practices and policies outlines above.

24. Defendants' utilization of such unfair business practices deprives Plaintiff and other aggrieved employees of the general minimum working standards and entitlements due to them under California law and the Industrial Welfare Commission wage orders as described herein.

25. Plaintiff and all other aggrieved employees were and are classified by Defendants as non-exempt employees, pursuant to the provisions of the California *Labor Code*, and the orders and

standards promulgated by the California Department of Industrial Relations, Industrial Welfare Commission, and Division of Labor Standards. As non-exempt employees, Plaintiff and all other aggrieved employees are entitled to certain benefits, including to be paid all wages. In addition, said statutory provisions, wage orders, regulations and standards obligate the employer to maintain accurate records of the hours worked by employees.

26. As a direct result of the wage and hour violations herein alleged, Plaintiff and members of the Plaintiff Class have suffered, and continue to suffer substantial losses related to the use and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel Defendants to fully perform its obligations under state law, all to Plaintiff's respective damage in amounts according to proof at the time of trial.

Defendants' Failure to Pay for All Hours Worked

27. Pursuant to a uniform policy originated by Defendants, all hourly employees are subject to a security check at the beginning and end of each shift. Hourly employees were and are required to wait in line and be searched for potential or possible items of contraband. Employees were/are required to place all of their belongings in plastic containers and open their bags. Thus, at the discretion and control of the Defendants and solely for their benefit, Plaintiff and other members of the Plaintiff Class were and are required to walk to the security check, and wait in lengthy lines for approximately five (5) to ten (10) minutes. This daily uncompensated waiting time during security checks was done in order to undergo searches for possible contraband. Because such screening is designed to prevent and deter employee contraband, the security checks and consequential wait time are necessary to the employee's primary work.

28. A large number of hourly employees leave the end of their shift at the same time. This creates lengthy lines and backups for employees authorized to conduct security screenings who are often times engaged in other job-related duties. As a result, employees are forced to wait in these lines and undergo lengthy off-the-clock security screenings before they are allowed to leave the premises. This work, done a necessity to the employees' work, is time which employees should be, but are not, compensated for both straight hours and overtime hours worked in excess of 40 in a week or, in California, in excess of 8 in a day.

29. Supervisors employed by Defendants had knowledge of and required Plaintiff to undergo these uncompensated security screenings and waiting times, in accordance with Defendants' corporate policy. Supervisors required and enforced the corporately derived and mandated security checks and requested that Plaintiff perform these integral and indispensable duties without proper wages or overtime compensation.

Defendants' Failure to Provide Compliant Meal Breaks

30. Plaintiff alleges that meal breaks were short as a result of having to spend approximately five (5) minutes walking to the breakroom, thereby depriving Plaintiff and members of the Plaintiff Class of the full meal break as required.

31. Plaintiff alleges that throughout the Relevant Time Period, Defendants regularly:

- a. Failed to provide Plaintiff and the members of the Plaintiff Class with a first meal period of not less than thirty (30) minutes during which they are relieved of all duty before working more than five (5) hours;
- b. Failed to pay Plaintiff and the members of the Plaintiff Class one hour of pay at their regular rate of compensation for each workday that a meal period was not provided; and
- c. Failed to accurately record all meal periods.

Defendants' Failure to Provide Compliant Rest Breaks

32. At all times, relevant hereto, California *Labor Code* § 226.7 and IWC Wage Order, section 12, required employers to authorize, permit, and provide a ten (10) minute paid rest for each four (4) hours of work, during which employees are relieved of all duty.

33. At all times, relevant hereto, California *Labor Code* § 226.7(b) and IWC Wage Order, section 12 required employers to pay one hour of additional pay at the regular rate of compensation for each employee and each workday that a proper rest period is not provided.

34. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to effectively communicate California rest period requirements to Plaintiff and the members of the plaintiff class. Plaintiff is further informed and believes and based thereon alleges that throughout the relevant time period Defendants failed to provide a full rest break.

1 35. Plaintiff alleges the walk time to break rooms was lengthy. Specifically, the break room
2 was a five (5) minute walk each way.

3 36. Throughout the Relevant Time Period, Plaintiff and the members of the Plaintiff Class
4 were routinely denied the rest breaks they were entitled to under California law.

5 37. Specifically, throughout the Relevant Time Period, Defendants regularly:

6 d. Failed to provide paid rest periods of ten (10) minutes during which Plaintiff and
7 the members of the Plaintiff Class were relieved of all duty for each four (4) hours
8 of work and able to take rest periods within the middle of the shift; and

9 e. Failed to pay Plaintiff and the members of the Plaintiff Class one (1) hour of pay
10 at their regular rate of compensation for each workday that a rest period was not
11 permitted.

12 ***Defendants' Failure to Pay All Wages Due at Termination of Employment***

13 38. At all times, relevant hereto, California *Labor Code* § 201 required an employer that
14 discharges an employee to pay compensation due and owing to said employee immediately upon
15 discharge. California *Labor Code* § 202 requires an employer to pay an employee who quits any
16 compensation due and owing to said employee within seventy-two (72) hours of an employee's
17 resignation. California *Labor Code* § 203 provides that if an employer willfully fails to pay
18 compensation promptly upon discharge or resignation, as required under Sections 201 and 202, then
19 the employer is liable for waiting time penalties in the form of continued compensation for up to thirty
20 (30) work days.

21 39. Defendants willfully and knowingly failed to pay Plaintiff and other members of the
22 Plaintiff Class, upon termination of employment, all accrued compensation.

23 40. Specifically, Plaintiff was entitled to be paid for all worked hours, however, due to
24 Defendants' security check, Plaintiff and other members of the Terminated Sub Class did not receive
25 all wages. Further, Plaintiff and members of the Plaintiff Class were entitled to be paid for meal and
26 rest break premiums.

1 ***Defendants' Failure to Provide Accurate Wage Statements***

2 41. Defendants failed to comply with California *Labor Code* Section 226(a) because the
3 hours worked are incorrect.

4 42. Specifically, Defendants include various items within the total hours including sick
5 pay. Thus, Defendants are in violation of section 226(a).

6 ***Facts Regarding Willfulness***

7 43. Plaintiff is informed and believes, and based thereon alleges, that Defendants are and
8 were advised by skilled lawyers, other professionals, employees with human resources background
9 and advisors with knowledge of the requirements of California wage and hour laws.

10 44. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times,
11 Defendants had a consistent policy or practice of failing to compensate the Plaintiff Class members,
12 including Plaintiff.

13 45. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times,
14 Defendants knew or should have known, that the Plaintiff Class members, including Plaintiff, were entitled
15 to receive pay for all hours worked.

16 46. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times,
17 Defendants knew or should have known, that the Plaintiff Class members, including Plaintiff, were and
18 are entitled to received accurate itemized wage statements.

19 ***Unfair Business Practices***

20 47. Defendants have engaged in, and continue to engage in, unfair business practices in
21 California by practicing, employing and utilizing the employment practices and policies outlined above.

22 48. Defendants' utilization of such unfair business practices constitutes unfair competition and
23 provides an unfair advantage over Defendants' competitors.

24 49. Defendants' utilization of such unfair business practices deprives Plaintiff and members of
25 the Plaintiff Class of the general minimum working standards and entitlements due them under California
26 law and the Industrial Welfare Commission wage orders as described herein.

27 50. As a direct result of the wage and hour violations herein alleged, Plaintiff and members of
28 the Plaintiff Class have suffered, and continue to suffer substantial losses related to the use and enjoyment

1 of wages, lost interest on such wages, and expenses and attorney's fees in seeking to compel Defendants
2 to fully perform their obligations under state law, all to Plaintiff's respective damage in amounts according
3 to proof at the time of trial.

4 **CLASS ACTION ALLEGATIONS**

5 51. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

6 52. Plaintiff brings this action on behalf of herself and all others similarly situated as a class
7 action, pursuant to California *Code of Civil Procedure* §382. The classes which Plaintiff seeks to represent
8 are composed of, and defined as follows:

9 **Plaintiff Class**

10 All persons who have been, or currently are, employed by Defendants and
11 who held, or hold, job positions which Defendants have classified as "non-
12 exempt" employees in the State of California.

13 **Terminated Sub Class**

14 All members of the Plaintiff Class whose employment ended during the
15 Class Period.

16 (collectively "Plaintiff Class" or "Class Members")

17 53. Plaintiff is informed and believes, and on that basis alleges, that during the class period
18 thousands of class members have been employed by Defendants as non-exempt employees in the State
19 of California. Because so many persons have been employed by Defendants in this capacity, the
20 members of the Plaintiff Class are so numerous that joinder of all members is impossible and/or
21 impracticable.

22 54. Common questions of law, in fact, exist as to all members of the Plaintiff Class and
23 predominate over any questions affecting solely individual members of the Plaintiff Class. Among the
24 questions of law and fact, that are relevant to the adjudication of class members claims are as follows:

- 25 a. Whether Plaintiff and Class Members are subject to and entitled to the benefits of
26 California wage and hour statutes;
27 b. Whether Defendants maintained accurate records of the hours worked by
28 employees;

- 1 c. Whether Defendants unlawfully and/or willfully failed to provide Plaintiff and
2 members of the Plaintiff Class with true and proper wage statements upon payment
3 of wages, in violation of California *Labor Code* §226;
- 4 d. Whether Defendants unlawfully and/or willfully failed to compensate employees
5 for all hours worked;
- 6 e. Whether Defendants unlawfully/or unwillingly failed to provide Plaintiff and the
7 Plaintiff Class with proper meal and rest breaks;
- 8 f. Whether Defendants unlawfully/or willingly failed to timely pay Plaintiff and the
9 Terminated Sub Class upon termination;
- 10 g. Whether Plaintiff and members of the Plaintiff Class sustained damages, and if so,
11 the proper measure of such damages, as well as interest, penalties, costs, attorneys'
12 fees, and equitable relief; and
- 13 h. Whether Defendants' conduct as alleged herein violates the Unfair Business
14 Practices Act of California, *Bus. & Prof. Code* § 17200, *et seq.*

15 55. The claims of the named Plaintiff are typical of the claims of the members of the
16 Plaintiff Class. Plaintiff and the members of the Plaintiff Class sustained losses, injuries and damages
17 arising from Defendant's common policies, practices, procedures, protocols, routines, and rules which
18 were applied to other class members as well as Plaintiff. Plaintiff seeks recovery for the same type of
19 losses, injuries, and damages as were suffered by other members of the proposed class.

20 56. Plaintiff is an adequate representative of the proposed classes because he is a member
21 of the class, and his interests do not conflict with the interests of the members he seeks to represent.
22 Plaintiff has retained competent counsel, experienced in the prosecution of complex class actions, and
23 together Plaintiff and his counsel intends to prosecute this action vigorously for the benefit of the
24 classes. The interests of the Class Members will fairly and adequately be protected by Plaintiff and
25 his attorneys.

26 57. A class action is superior to other available methods for the fair and efficient
27 adjudication of this litigation since individual litigation of the claims of all Class Members is
28 impracticable. It would be unduly burdensome to the courts if these matters were to proceed on an

individual basis, because this would potentially result in hundreds of individuals, repetitive lawsuits. Further, individual litigation presents the potential for inconsistent or contradictory judgments, and the prospect of a “race to the courthouse,” and an inequitable allocation of recovery among those with equally meritorious claims. By contrast, the class action device presents far fewer management difficulties, and provides the benefit of a single adjudication, economics of scale, and comprehensive supervision by a single court.

58. The various claims asserted in this action are additionally or alternatively certifiable under the provisions of the California *Code of Civil Procedure* § 382 because:

- a. The prosecution of separate actions by hundreds of individual class members would create a risk of varying adjudications with respect to individual class members, thus establishing incompatible standards of conduct for Defendant, and
- b. The prosecution of separate actions by individual class members would also create the risk of adjudications with respect to them that, as a practical matter, would be dispositive of the interest of the other class members who are not a party to such adjudications and would substantially impair or impede the ability of such non-party class members to protect their interests.

59. Plaintiff hereby incorporates each and every allegation contained above and realleges said allegations as if fully set forth herein.

FIRST CAUSE OF ACTION

FAILURE TO PAY FOR ALL HOURS WORKED

(By Plaintiff and the Members of the Plaintiff Class Against Defendants)

60. Plaintiff incorporates herein by reference the allegations set forth above.

61. At all times relevant herein, which comprise the time period not less than four (4) years preceding the filing of this action, Defendants were required to compensate their hourly employees for all hours worked upon reporting for work at the appointed time stated by the employer, pursuant to the Industrial Welfare Commission Orders and California *Labor Code* §§ 200, 226, 1197, and 1198.

1 62. For at least the four (4) years preceding the filing of this action, Defendants failed to
2 compensate employees for all hours worked. Defendants implemented policies that actively prevented
3 employees from being compensated for all time worked.

4 63. Under the above-mentioned wage order and state regulations, Plaintiff and the Plaintiff
5 Class are entitled to recover compensation for all hours worked, but not paid, for the four (4) years
6 preceding the filing of this action, in addition to reasonable attorney's fees and costs of suit in
7 accordance with California *Labor Code* § 218.5, and penalties pursuant to California *Labor Code*
8 §203 and 206.

9 64. Defendants did not compensate their hourly non-exempt employees for all the minutes
10 that they worked as described above, including but not limited to the time that the employees were
11 subject to the control and direction of Defendants; and/or the time that the employees were suffered
12 or permitted to work.

13 65. Pursuant to a uniform policy originated by Defendants, all hourly employees are
14 subject to a security check at the beginning and end of each shift. Hourly employees were and are
15 required to wait in line and be searched for potential or possible items of contraband. Employees
16 were/are required to place all of their belongings in plastic containers and open their bags. Thus, at
17 the discretion and control of the Defendants and solely for their benefit, Plaintiff and other members
18 of the Plaintiff Class were and are required to walk to the security check, and wait in lengthy lines for
19 approximately five (5) to ten (10) minutes. This daily uncompensated waiting time during security
20 checks was done in order to undergo searches for possible contraband. Because such screening is
21 designed to prevent and deter employee contraband, the security checks and consequential wait time
22 are necessary to the employee's primary work.

23 66. A large number of hourly employees leave the end of their shift at the same time. This
24 creates lengthy lines and backups for employees authorized to conduct security screenings who are
25 often times engaged in other job-related duties. As a result, employees are forced to wait in these lines
26 and undergo lengthy off-the-clock security screenings before they are allowed to leave the premises.
27 This work, done a necessity to the employees' work, is time which employees should be, but are not,
28 compensated for both straight hours and overtime hours worked in excess of 40 in a week or, in

1 California, in excess of 8 in a day.

2 67. Supervisors employed by Defendants had knowledge of and required Plaintiff to
3 undergo these uncompensated security screenings and waiting times, in accordance with Defendants'
4 corporate policy. Supervisors required and enforced the corporately derived and mandated security
5 checks and requested that Plaintiff perform these integral and indispensable duties without proper
6 wages or overtime compensation.

7 68. Defendants committed such actions alleged knowingly and willfully, with the wrongful
8 and deliberate intention of injuring Plaintiff and the Plaintiff Class, from improper motives amounting
9 to malice, and in conscious disregard of Plaintiff's and the Plaintiff Class' rights.

10 69. Plaintiff and the Plaintiff Class are thus entitled to recover nominal, actual,
11 compensatory, punitive, and exemplary damages in amounts according to proof at the time of trial.

12 70. As a proximate result of the above-mentioned violations. Plaintiff and the Plaintiff
13 Class have been damaged in an amount according to proof at time of trial.

14 **SECOND CAUSE OF ACTION**

15 **SHORT MEAL BREAKS IN VIOLATION OF**

16 **CAL. LABOR CODE §§200, 226.7, 512**

17 **(By Plaintiff and the Members of the Plaintiff Class Against Defendants)**

18 71. Plaintiff incorporates herein by reference the allegations set forth above.

19 72. For at least the four (4) years preceding the filing of this action, Defendants failed to
20 provide meal breaks as required by law.

21 73. California *Labor Code* § 226.7(a) provides that: "No employer shall require any
22 employee to work during any meal or rest period mandated by an applicable order of the Industrial
23 Welfare Commission."

24 74. California *Labor Code* § 512 provides that: "An employer may not employ an
25 employee for a work period of more than five hours per day without providing the employee with a
26 meal period of not less than 30 minutes, except that if the total work period per day of the employee
27 is no more than six hours, the meal period may be waived by mutual consent of both the employer and
28 employee."

1 75. The applicable Wage Order Section 11(D) states “If an employer fails to provide an
2 employee a meal period in the applicable provisions of this order, the employer shall pay the employee
3 one (1) hour of pay at the employee’s regular rate of compensation each day that the meal period is
4 not provided.”

5 76. Throughout the Class Period, Plaintiff and the members of the Plaintiff Class
6 consistently worked over five (5) hours per work period, and therefore, were entitled to a meal period
7 of not less than thirty (30) minutes prior to exceeding five (5) hours of employment.

8 77. Defendants failed to pay Plaintiff and the Class members the full statutory penalty for
9 all missed meal periods.

10 78. At all times relevant to this Complaint, each Defendant failed, and has continued to
11 fail, to timely provide Plaintiff and the members of the Plaintiff Class with meal periods.

12 79. Thus, throughout the Class Period, Defendants regularly:

- 13 a. Failed to provide timely, 30-minute uninterrupted meal periods during which
14 Plaintiff and the members of the Plaintiff Class were relieved of all duty for each
15 five (5) hours of work;
16 b. Failed to pay Plaintiff and the members of the Plaintiff Class one (1) hour of pay at
17 their regular rate of compensation for each workday that a meal period was not
18 permitted.

19 80. Specifically, Plaintiff and Plaintiff Class members’ meal breaks were routinely cut
20 short, as Plaintiff and Plaintiff Class members had to walk five (5) minutes to and from the breakroom.

21 81. As a direct and proximate result of the acts and/or omissions of Defendants, Plaintiff
22 and the members of the Plaintiff Class have been deprived of meal period wages due in amounts to
23 be determined at trial.

24 82. Defendants’ conduct described herein violates the Industrial Welfare Commission
25 Order and California *Labor Code* §§ 226, 226.7, 512, and 1198.

26 //

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28 ///

THIRD CAUSE OF ACTION
SHORT REST BREAKS IN VIOLATION OF
CAL. LABOR CODE §§200, 226.7, 512

(By Plaintiff and the Members of the Plaintiff Class Against Defendants)

83. Plaintiff incorporates herein by reference the allegations set forth above.

84. For at least the four (4) years preceding the filing of this action, Defendants failed to provide rest breaks as required by law.

85. The applicable Wage Order Section 12(A) states “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

86. The applicable Wage Order Section 12(B) states “If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.”

87. Plaintiff and the Class Members are entitled to recover additional compensation for all rest periods that were missed, but not paid for, during the four (4) years preceding the filing of this Complaint, plus reasonable attorneys’ fees and costs of suit pursuant to California *Labor Code* § 218.5 and penalties pursuant to California *Labor Code* § 226.7.

88. Defendants failed to provide Plaintiff and Class Members the full ten (10) minutes of rest time prescribed by law. To reach the break area, Plaintiff and Class Members must walk a long distance. This time reduces the amount of rest time.

89. As a proximate result of the aforementioned violations, Plaintiff and the Class Members have been damaged in an amount according to proof at time of trial and have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such monies, lost interest on such monies, and expenses and attorneys’ fees in seeking to compel Defendants to fully perform its obligations under state law. Plaintiff and the Class Members are thus entitled to recover nominal, actual, compensatory and exemplary damages in amount according to proof at time of trial.

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO FURNISH AN ACCURATE ITEMIZED WAGE STATEMENT IN**
3 **VIOLATION OF CAL. LABOR CODE § 226**

4 **(By Plaintiff and the Members of the Plaintiff Class Against Defendants)**

5 90. Plaintiff hereby re-alleges, and incorporates by reference as though set fully forth
6 herein, the allegations contained above.

7 91. California *Labor Code* § 226(a) sets forth reporting requirements for employers when
8 they pay wages, as follows: “[e]very employer shall ... at the time of each payment of wages, furnish
9 his or her employees ... an accurate itemized statement in writing showing (1) gross wages earned; (2)
10 total hours worked by the employee.... (5) net wages earned ... (8) the name and address of the legal
11 entity that is the employer... (9) all applicable hourly rates in effect during the pay period and the
12 corresponding number of hours worked at each hourly rate by the employee.” (Emphasis added.)
13 Section (e) provides: “An employee suffering injury as a result of a knowing and intentional failure
14 by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual
15 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
16 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate
17 penalty of four thousand dollars (\$4000), and shall be entitled to an award of costs and reasonable
18 attorney’s fees.”

19 92. Defendants failed to accurately report the total number of hours worked by Plaintiff
20 and the Class Members on their wage statements.

21 93. Defendants failed to accurately represent the total hours worked by Plaintiff and Class
22 members in that all hours worked are not accurately reflected on their wage statements, and
23 Defendants include various items within total hours including, sick pay.

24 94. Plaintiff and Class members were damaged by these failures because, among other
25 things, the failures hindered Plaintiff and Class members from determining the amounts of wages
26 actually owed to them, and which corporation is actually their employer.

27 95. Plaintiff and Class Members request recovery of California *Labor Code* § 226(e)
28 penalties according to proof, as well as interest, attorneys’ fees and costs pursuant to California *Labor*

Code § 226(e), in a sum as provided by the Labor Code and/or other statutes.

96. Wherefore, Plaintiff requests relief as hereinafter provided.

FIFTH CAUSE OF ACTION

FAILURE TO PAY WAGES AT TIME OF

TERMINATION IN VIOLATION OF CAL. LABOR CODE §§ 201-203

(By Plaintiff and Members of the Terminated Sub Class Against Defendants)

97. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

98. At all times, relevant herein, Defendants were required to pay their employees all wages owed in a timely fashion during and at the end of their employment, pursuant to California *Labor Code* §§ 201-203.

99. As a pattern and practice, Defendants regularly failed to pay Plaintiff and the members of the Terminated Sub Class their final wages pursuant to California *Labor Code* §§ 201-203, and accordingly owe waiting time penalties pursuant to California *Labor Code* § 203.

100. The conduct of Defendants and its agents and managerial employees as described herein was willful, and in violation of the rights of Plaintiff and the individual members of the Terminated Sub Class.

101. Plaintiff is informed and believes, and based thereon alleges, that Defendants' willful failure to pay wages due and owing them upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and Class Members who have separated from employment are entitled to compensation pursuant to California *Labor Code* § 203.

SIXTH CAUSE OF ACTION

VIOLATIONS OF CALIFORNIA

BUSINESS AND PROFESSIONS CODE SECTION 17200, et seq.

(By Plaintiff and the Members of the Plaintiff Class Against Defendant)

102. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

1 103. Section 17200 of the California *Business and Professions Code* prohibits any unlawful,
2 unfair or fraudulent business act or practice.

3 104. Plaintiff brings this cause of action in a representative capacity on behalf of the general
4 public and the persons affected by the unlawful and unfair conduct described herein. Plaintiff and
5 members of the Plaintiff Class have suffered, and continue to suffer, injury in fact and monetary
6 damages because of Defendants' actions.

7 105. The actions by Defendants as herein alleged amount to conduct which is unlawful and
8 a violation of law. As such, said conduct amounts to unfair business practices in violation of California
9 *Business and Professions Code* § 17200, *et seq.*

10 106. Defendants' conduct as herein alleged has damaged Plaintiff and the members of the
11 Plaintiff Class by denying them wages due and payable, failing to provide Plaintiff and class members
12 with full meal and rest breaks, and by failing to pay all wages due in a timely manner at the time of
13 termination (for the Terminated Sub Class). Defendants' actions are thus substantially injurious to
14 Plaintiff and the members of the Plaintiff Class, causing them injury in fact and loss of money.

15 107. Because of such conduct, Defendants have unlawfully and unfairly obtained monies
16 due to the Plaintiff and the members of the Plaintiff Class.

17 108. All members of the Plaintiff Class can be identified by reference to payroll and related
18 records in the possession of the Defendant. The amount of wages due to Plaintiff and members of the
19 Plaintiff Class can be readily determined from Defendant's records. The Class Members are entitled
20 to restitution of monies due and obtained by Defendants during the Class Period as a result of
21 Defendants' unlawful and unfair conduct.

22 109. During the Class Period, Defendants committed, and continue to commit, acts of unfair
23 competition as defined by § 17200, *et seq.*, of the *Business and Professions Code*, by and among other
24 things, engaging in the acts and practices described above.

25 110. Defendants' course of conduct, acts, and practices in violation of the California law as
26 mentioned in each paragraph above constitutes a separate and independent violation of § 17200, *etc.*,
27 of the *Business and Professions Code*.
28

111. The harm to Plaintiff and the members of the Plaintiff Class of being wrongfully denied lawfully earned and unpaid wages outweighs the utility, if any, of Defendants' policies and practices and, therefore, Defendants' actions described herein constitute an unfair business practice or act within the meaning of *Business and Professions Code* § 17200.

112. Defendants' conduct described herein threatens an incipient violation of California's wage and hour laws, and/or violates the policy or spirit of such laws, or otherwise significantly threatens or harms competition.

113. Defendants' course of conduct described herein further violates California *Business and Professions Code* § 17200 in that it is fraudulent, improper, and unfair.

114. The unlawful, unfair, and fraudulent business practices and acts of Defendants as described herein-above have injured Plaintiff and members of the Plaintiff Class in that they were wrongfully denied the timely and full payment of wages due to them.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and Class Members pray for judgment as follows:

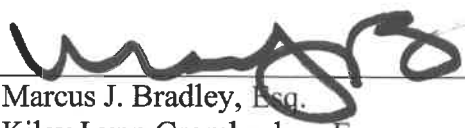
1. An order that the action be certified as a class action;
2. An order that counsel for Plaintiff be appointed class counsel;
3. For restitution of all monies due to Plaintiff and the members of the Plaintiff Class and disgorgement of all profits from the unlawful business practices of Defendants;
4. For compensatory damages;
5. For penalties pursuant to California *Labor Code* §§ 200, 218.5, 226, 226.7;
6. For interest accrued to date;
7. For costs of suit and expenses incurred herein pursuant to California *Labor Code* §§ 226 and 1194;
8. For reasonable attorneys' fees pursuant to California *Labor Code* §§ 226, and 1194;
- and,
9. A declaratory judgment that Defendants have knowingly and intentionally violated the following provisions of law:
 - a. California *Labor Code* §§ 1194, 510, by failing to pay all wages owed;

- b. California *Labor Code* § 226.7 by failing to provide meal and rest breaks mandated by law;
- c. California *Labor Code* § 226, by failing to provide the information required with each payment of wages;
- d. California *Labor Code* §§ 201-203, by failing to pay all wages when due and by willfully failing to make timely payment of the full wages due to workers who quit or have been discharged; and
- e. California *Business & Professions Code* §§ 17200-08 by violating the provisions set forth herein above.

10. For all such other and further relief that the Court may deem just and proper.

DATED: November 20, 2020

**BRADLEY/GROMBACHER LLP
LAW OFFICES OF SAHAG MAJARIAN II**

By: 

Marcus J. Bradley, Esq.
Kiley Lynn Grombacher, Esq.
Lirit A. King, Esq.
Sahag Majarian II, Esq.

Attorneys for Plaintiff

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable as a matter of right.

DATED: November 20, 2020

**BRADLEY/GROMBACHER, LLP
LAW OFFICES OF SAHAG MAJARIAN II**

By: 

Marcus J. Bradley, Esq.
Kiley L. Grombacher, Esq.
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